

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
NETSAT 28 COMPANY, L.L.C.)
)
For Authority to Construct, Launch, and Operate a) File No. 194-SAT-P/LA-95
Ka-Band Communications Satellite in the Fixed-) New IBSF No. SAT-LOA-19950929-00150
Satellite Service in Orbital Location 95° W.L.)
)
For Authority to Transfer Control) File No. SAT-T/C-19990727-00080
)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2000

Released: June 26, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we cancel NetSat 28 Company’s, L.L.C. (“NetSat 28”) authorization to construct, launch, and operate a Ka-band satellite in the fixed-satellite service. NetSat 28 has failed to satisfy the initial, mandatory implementation milestone explicitly set forth in its authorization requiring it to begin construction of this satellite system by May 1998. Consequently, we render NetSat 28’s authorization null and void, and the orbit location that had been assigned to NetSat 28 is available for reassignment to a qualified applicant in the second Ka-band “processing round.” As a result, we also dismiss NetSat 28’s application for transfer of control as moot.

II. BACKGROUND

2. On May 9, 1997, the Chief, International Bureau, pursuant to delegated authority, authorized NetSat 28 to construct, launch, and operate a geostationary-orbit satellite and to provide fixed-satellite service in the United States in the 19.7–20.2, 28.35–28.6, and 29.25–30.0 GHz frequency bands (“Ka-band”).¹ This authorization was granted as part of the first “processing round” of Ka-band systems. In the first round, the Bureau authorized a total of 14 Ka-band systems, including NetSat 28’s Ka-band system.² Satellite systems in this band have the potential to provide a wide variety of broadband interactive digital services in the United States and around the world, including voice, data, video, videoconferencing, facsimile, computer access and telemedicine.³

¹ NetSat 28 Company, L.L.C., 13 FCC Rcd 1392 (Int’l Bur. 1997).

² Assignment of Orbital Locations to Space Stations in the Ka-band, Order, 13 FCC Rcd 13737 (1996).

³ In the Matter of RuleMaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz frequency Band, to Reallocate the 29.5-30.0 GHz frequency Band, to Establish rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 12 FCC Rcd 22,310 (1997).

3. NetSat 28’s license, like all instruments of authorization granted to satellite licensees, was a conditional license. It contained explicit deadlines or “milestones” for system implementation that NetSat 28 was required to satisfy. NetSat 28’s authorization explained that the milestones are necessary to ensure “that licensees are building their systems in a timely manner and that the orbit-spectrum is not being held by licensees unable or unwilling to proceed with their plans.”⁴ NetSat 28’s authorization specified that:

... unless extended by the Commission for good cause shown, this authorization shall become NULL AND VOID in the event the space station is not constructed, launched, and successfully placed into operation in accordance with the technical parameters and terms and conditions of the authorization by the following dates:⁵

<u>Construction Commenced</u>	<u>Construction Completed</u>	<u>Launch</u>
May 1998	April 2002	May 2002

4. By late 1999, NetSat 28 had not informed the Commission that it had begun construction by the required date, nor had it requested an extension of the May 1998 construction commencement deadline. Consequently, by letter dated December 9, 1999, the Chief, Satellite and Radiocommunication Division, International Bureau, requested NetSat 28 to substantiate that it had complied with the May 1998 deadline. The letter reminded NetSat 28 that:

The Commission requires the execution of a non-contingent construction contract to satisfy the construction commencement milestone of domestic satellite licenses. The non-contingent requirement contemplates that there will be neither significant delays between the execution of the construction contract and the actual commencement of construction, nor conditions precedent to construction.⁶

5. In its response, NetSat 28 provided a redacted copy of a construction contract with Space Systems/Loral, Inc.⁷ The contract, which was effective December 17, 1999, provides for the on-orbit delivery of a Ka-band communications satellite utilizing a payload that is under development and will be supplied by EMS Technologies Canada, Ltd., a subsidiary of EMS Technologies, Inc. NetSat 28 also provided a written statement, dated December 20, 1999, from C. Patrick DeWitt, Executive Vice President of Space Systems/Loral, stating that it “is immediately commencing its performance under the contract....” NetSat 28 did not provide a copy of any contract with EMS Technologies Canada, Ltd. or EMS Technologies, Inc.

⁴ *NetSat 28 Company, L.L.C.*, 13 FCC Rcd at 1401.

⁵ *Id.* at 1403.

⁶ Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, FCC, to Albert Shuldiner, Esq., Vinson & Elkins, L.L.P., Counsel for NetSat 28, (Dec. 9, 1999), citing Norris *Satellite Communications, Inc.*, 12 FCC Rcd 22299, 22303-04 (1997).

⁷ Letter from Albert Shuldiner, Vinson & Elkins, L.L.P., Counsel for NetSat 28, to Thomas Tycz, Chief, Radiocommunication Division, FCC (Dec. 20, 1999).

III. DISCUSSION

6. It is long-standing Commission policy to impose mandatory construction commencement milestones upon licensees in the fixed-satellite service.⁸ The milestone schedule included in each authorization is designed to ensure that licensed entities are proceeding with construction and will launch their authorized satellites into the limited orbit spectrum resource in a timely manner. Requiring licensees to adhere strictly to a milestone schedule prevents orbital locations and spectrum from being “warehoused” by licensees to the exclusion of qualified entities that are prepared to implement systems immediately.⁹ Moreover, the Commission has consistently required licensees to execute non-contingent satellite construction contracts in order to meet their construction commencement milestones.¹⁰ Because it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service, the Commission has strictly enforced its milestone schedules.¹¹

7. By its terms, NetSat 28’s authorization required NetSat 28 to commence construction of its satellite system no later than May 1998. To meet this deadline, NetSat 28 was required to have entered into a non-contingent construction contract executed on or before this deadline. NetSat 28 did not execute a construction contract with Space Systems/Loral, Inc. until December 17, 1999 – approximately 18 months after the mandatory milestone. The supporting statement from C. Patrick DeWitt, Executive Vice President of Space Systems/Loral, stating that it “is immediately commencing its performance under the contract ...” further demonstrates NetSat 28’s failure to satisfy the May 1998 construction commencement deadline. NetSat 28’s response to the Commission inquiry does not attempt to explain this deficiency.

8. NetSat 28’s authorization expressly provided that, unless extended upon a showing of good cause, the license would become null and void in the event NetSat 28 failed to satisfy any one of its milestones. NetSat 28 did not request an extension of the May 1998 construction commencement deadline, and we find no basis for extending or otherwise waiving this threshold milestone.

9. In addition, we dismiss NetSat 28’s application for transfer of control filed in July 1999 and amended October 1999.¹² NetSat 28 requested authorization to permit EMS Technologies, Inc. to obtain a controlling interest in the company. Because NetSat 28’s authorization has become null and void, however, there is no license to transfer. Therefore, we dismiss the transfer of control application as moot.

IV. CONCLUSION AND ORDERING CLAUSES

⁸ See, e.g., *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22,299 (1997).

⁹ *MCI Communications Corporation*, 2 FCC Rcd 233 (CCB 1987).

¹⁰ *Norris Satellite Communications, Inc.*, 12 FCC Rcd 22,299 (1997).

¹¹ See, e.g., *National Exchange Satellite, Inc.*, 8 FCC Rcd 636 (1993); *Advanced Communications Corporation*, 10 FCC Rcd 13,337 (Int’l Bur. 1995).

¹² NetSat 28 Company, Inc., File No. SAT-T/C-19990727-00080, amended October 17, 1999. Celsat America, Inc., Hughes Communications, Inc., Pacific Century Group, and Pegasus Development Corp. filed oppositions to the application asserting, among other things, that NetSat failed to meet its construction commencement milestones.

10. Based on the foregoing, we conclude that NetSat 28 has failed to meet the May 1998 construction commencement deadline, as required by its authorization. We further conclude that NetSat 28's failure to satisfy this condition renders the authorization null and void.

11. Accordingly, IT IS ORDERED that, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, the authorization held by NetSat 28 Company, L.L.C., File No. 194-SAT-P/LA-95, IBSF No. SAT-LOA-19950929-00150, IS DECLARED NULL AND VOID.

12. IT IS FURTHER ORDERED that the orbital assignment granted in *NetSat 28 Company, L.L.C.*, 13 FCC Rcd 1392 (Int'l Bur. 1997), is available for reassignment.

13. IT IS FURTHER ORDERED that the application for transfer of control filed by NetSat 28 Company Inc., File No. SAT-T/C-19990727-00080, is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau